

Memorandum 2010-42

**Status of SB 1080 (Committee on Public Safety)
and SB 1115 (Committee on Public Safety)**

Two bills were introduced this year to implement the Commission's recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports 217 (2009). The proposed reorganization of the deadly weapon statutes was in Senate Bill 1080 (Committee on Public Safety), which was enacted as 2010 Cal. Stat. ch. 711. The conforming revisions (corrections of cross-references to the statutes relocated by SB 1080) were in Senate Bill 1115 (Committee on Public Safety), which was enacted as 2010 Cal. Stat. ch. 178. Both bills have a delayed operative date of January 1, 2012.

During the legislative process, it was necessary to coordinate SB 1080 with nine other pending bills that involved provisions in the same part of the Penal Code. SB 1115 did not need to be coordinated with other bills, because it included a subordination clause, which ensured that SB 1115 would not override any bill making a more significant change than SB 1115's cross-reference corrections.

Of the nine bills coordinated with SB 1080, the four that required the most extensive coordination died at the end of the legislative session, without reaching the Governor. Those bills were: AB 1810 (Feuer), AB 1934 (Saldaña and Ammiano), AB 2358 (De Leon), and SB 282 (Wright).

The remaining five bills were enacted as follows:

- AB 2263 (Yamada), 2010 Cal. Stat. ch. 256.
- AB 2668 (Galgiani), 2010 Cal. Stat. ch. 689.
- SB 408 (Padilla), 2010 Cal. Stat. ch. 21 (urgency measure).
- SB 1062 (Strickland), 2010 Cal. Stat. ch. 709.
- SB 1190 (Cedillo), 2010 Cal. Stat. ch. 109.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

Some revisions of the Commission's recommendation are necessary to reflect those enactments.

Attached are drafts of (1) a report on SB 1080 and (2) a report on SB 1115, which would reflect changes made in the legislative process. The Commission has previously approved most of the changes reflected in those drafts. See Minutes (April 2010), p. 3; Minutes (Aug. 2010), pp. 3-4.

A few decisions still require approval. Those decisions are presented below, followed by a brief description of next year's clean-up bill on the deadly weapon statutes.

AB 2263 (YAMADA)

AB 2263 (Yamada) extended the sunset dates in the *Cunningham*-tailored versions of a number of statutes from January 1, 2011, to January 1, 2012, and made the pre-*Cunningham* versions operative on January 1, 2012, instead of January 1, 2011. Because SB 1080 does not become operative until January 1, 2012, and the *Cunningham*-tailored versions of those statutes are scheduled to sunset by then, SB 1080 does not include those versions. It does, however, repeal and reenact the pre-*Cunningham* versions.

To coordinate SB 1080 with AB 2263, it was necessary to change the operative date stated in the pre-*Cunningham* versions of Penal Code Sections 12021.5(d), 12022.2(d), and 12022.4(b) from January 1, 2011, to January 1, 2012, as shown in the draft report on SB 1080. See 2010 Cal. Stat. ch. 711, §§ 6.01, 6.02, 6.03, 8.01, 8.02, 8.03. The Commission previously approved those revisions.

Similar revisions are needed to the Comments, as shown below:

Comment. Section 12021.5 continues former Section 12021.5 (as operative Jan. 1, ~~2011~~ 2012) without change, except that subdivisions (c)(5)-(6) are revised to correct cross-references to the definitions of "rifle" and "shotgun."

See also Section 12001 ("firearm" defined).

Comment. Section 12022.2 continues former Section 12022.2 (as operative Jan. 1, ~~2011~~ 2012) without change, except that subdivision (b) is revised to correct a cross-reference to the definition of "violent offense."

See also Section 12001 ("firearm" defined).

Comment. Section 12022.4 continues former Section 12022.4 (as operative Jan. 1, ~~2011~~ 2012) without change.

See also Section 12001 ("firearm" defined).

SB 408 (PADILLA)

To coordinate SB 1080 with SB 408 (Padilla), it was necessary to add a definition of “body armor” to new Part 6 of the Penal Code. That has already been done and approved by the Commission. See 2010 Cal. Stat. ch. 711, § 6 (Penal Code § 16288). However, the Commission has not yet approved a Comment for that new provision. **The staff recommends that the Commission approve the Comment shown below:**

Penal Code § 16288. “Body armor”

16288. As used in Section 31360, “body armor” means any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor.

Comment. Section 16288 continues former Section 12370(f) without substantive change.

To further reflect the addition of the definition of “body armor,” **the Comment to Penal Code Section 31360 should be revised as shown below:**

Comment. Section 31360 continues former Section 12370(a)-(d) without substantive change.

See ~~Section~~ Sections 16288 (“body armor”), 17320 (“violent felony”).

The Commission’s disposition table and supplemental disposition table should also be revised to reflect the above changes. In particular, **the entry in the disposition table for “12360-12370 (entire chapter)” should be revised to read:**

Existing Provision	Corresponding New Provision
12360-12370 (entire chapter)	16288, 17320, 31310-31360 (entire chapter)*

In addition, **a new entry should be added to the table, to show the disposition of new subdivision (f) of Section 12370:**

Existing Provision	Corresponding New Provision
12370(f)	16288

Similarly, **the entry for “Sections 12360 to 12370, inclusive” in the supplemental disposition table should be revised to read:**

Existing Provisions:

Sections 12360 to 12370, inclusive

(This is the same as Chapter 3.5 (commencing with Section 12360) of Title 2 of Part 4.)

Corresponding New Provisions:

Chapter 3 (commencing with Section 31310) of Division 10 of Title 4 of Part 6, which is the same as Sections 31320 to 31360, inclusive
plus ...
Sections 16288 (“body armor”) and 17320 (“violent felony”)

APPROVAL OF DRAFT REPORTS

After making the decisions presented above, the Commission should **consider whether to approve the draft reports attached to this memorandum (with or without revisions), for printing as appendices to the Commission’s next annual report.**

NEXT YEAR’S CLEAN-UP BILL

Almost every piece of major legislation requires some clean-up legislation the year after enactment. SB 1080 and SB 1115 are no exception.

In particular, clean-up legislation is necessary to do the following:

- (1) Correct some technical problems in a few of the provisions in SB 1115, which we refrained from fixing this year to avoid the costs inherent in amending such a voluminous bill.
- (2) Conform a cross-reference in Education Code 49330, which the Commission did not conform in SB 1115 because the proper way to conform that provision was unclear and attempting to do so might have impeded enactment of SB 1080 and SB 1115.
- (3) Conform any new cross-references to Penal Code §§ 12000-12809 that were added to the codes this year. We are aware of some such cross-references in Penal Code Section 171.7, which was added by AB 2324 (Perez). We will search for additional new cross-references that need to be conformed.
- (4) Address “chaptering out” problems. In particular, it appears that 15 of the 106 amendments in SB 1115 were “chaptered out” (i.e., nullified), due to the subordination clause in SB 1115 and the enactment of other legislation affecting the same code section. A list of those provisions is attached as an Exhibit. We will double-check this list using the most recent version of Legislative Counsel’s Table of Sections Affected, to be sure the list is complete. In addition, SB 1115 itself chaptered out some amendments, because each of those amendments was in a bill with a subordination clause that was more comprehensive than the one in SB 1115. Specifically, SB 1115 chaptered out the amendment of

Penal Code Section 273.6 in SB 1062 (Strickland) and the amendments of Penal Code Sections 626.10 and 1203.4 in SB 1330 (Committee on Judiciary). Those problems should be remedied through clean-up legislation.

Because SB 1080 and SB 1115 will not be operative until January 1, 2012, it should be possible to accomplish the necessary clean-up before they become operative.

For the Commission meeting in December, the staff will provide further details regarding next year's clean-up bill. It is possible that the bill should cover other matters, in addition to the ones listed above.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

SB 1115 AMENDMENTS THAT WERE CHAPTERED OUT

Senate Bill 1115 (Committee on Public Safety) was enacted, but the bill includes a subordination clause. See 2010 Cal. Stat. ch. 178, § 108. Due to the subordination clause, the following amendments in SB 1115 were chaptered out pursuant to Government Code Section 9605:

- (1) **Code Civ. Proc. § 527.6.** Chaptered out by AB 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 1.
 - (2) **Code Civ. Proc. § 527.8.** Chaptered out by AB 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 2.
 - (3) **Code Civ. Proc. § 527.85.** Chaptered out by AB 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 4.
 - (4) **Code Civ. Proc. § 527.9.** Chaptered out by AB 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 5.
 - (5) **Fam. Code § 6389.** Chaptered out by AB 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 23.
 - (6) **Gov't Code § 6254.** Chaptered out by AB 1887 (Villines), 2010 Cal. Stat. ch. 32, § 1.
 - (7) **Penal Code § 166.** Chaptered out by AB 2632 (Davis), 2010 Cal. Stat. ch. 677, § 1.
 - (8) **Penal Code § 171c.** Chaptered out by AB 2668 (Galgiani), 2010 Cal. Stat. ch. 689, §§ 1, 2.
 - (9) **Penal Code § 186.22 (as added by 2009 Cal. Stat. ch. 171, § 2).** Chaptered out by AB 2263 (Yamada), 2010 Cal. Stat. ch. 256, § 2.
 - (10) **Penal Code § 629.52.** Chaptered out by SB 1428 (Pavley), 2010 Cal. Stat. ch. 707, § 3.
 - (11) **Penal Code § 1203.4a.** Chaptered out by AB 2582 (Adams), 2010 Cal. Stat. ch. 99, § 1.
 - (12) **Penal Code § 2962.** Chaptered out by AB 1844 (Fletcher), 2010 Cal. Stat. ch. 219, § 18.
 - (13) **Penal Code § 11105.** Chaptered out by SB 1417 (Cox), 2010 Cal. Stat. ch. 652, § 13.
 - (14) **Welf. & Inst. Code § 8103.** Chaptered out by AB 302 (Beall), 2010 Cal. Stat. ch. 344, § 1.
 - (15) **Welf. & Inst. Code § 15657.03.** Chaptered out by AB 1596 (Hayashi), 2010 Cal. Stat. ch. 572, § 26.
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REPORT OF THE CALIFORNIA LAW REVISION COMMISSION
ON CHAPTER 711 OF THE STATUTES OF 2010
(SENATE BILL 1080)

Nonsubstantive Reorganization of Deadly Weapon Statutes

Chapter 711 of the Statutes of 2010 was introduced as Senate Bill 1080, authored by the Committee on Public Safety. The measure implements the California Law Revision Commission recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports 217 (2009), except the conforming revisions. The material set out below (statutes, Comments, disposition table, and supplemental disposition table) supplements the recommendation and supersedes comparable material in the recommendation. This new material reflects revisions made to coordinate SB 1080 with other legislation enacted in 2010.

Penal Code § 12021.5 (as operative Jan. 1, 2012). Weapon enhancement for street gang crime

12021.5. (a) Every person who carries a loaded or unloaded firearm on his or her person, or in a vehicle, during the commission or attempted commission of any street gang crimes described in subdivision (a) or (b) of Section 186.22, shall, upon conviction of the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for one, two, or three years in the court's discretion. The court shall impose the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentence.

(b) Every person who carries a loaded or unloaded firearm together with a detachable shotgun magazine, a detachable pistol magazine, a detachable magazine, or a belt-feeding device on his or her person, or in a vehicle, during the commission or attempted commission of any street gang crimes described in subdivision (a) or (b) of Section 186.22, shall, upon conviction of the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for two, three, or four years in the court's discretion. The court shall impose the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentence.

(c) As used in this section, the following definitions shall apply:

(1) "Detachable magazine" means a device that is designed or redesigned to do all of the following:

(A) To be attached to a rifle that is designed or redesigned to fire ammunition.

(B) To be attached to, and detached from, a rifle that is designed or redesigned to fire ammunition.

(C) To feed ammunition continuously and directly into the loading mechanism of a rifle that is designed or redesigned to fire ammunition.

(2) “Detachable pistol magazine” means a device that is designed or redesigned to do all of the following:

(A) To be attached to a semiautomatic firearm that is not a rifle or shotgun that is designed or redesigned to fire ammunition.

(B) To be attached to, and detached from, a firearm that is not a rifle or shotgun that is designed or redesigned to fire ammunition.

(C) To feed ammunition continuously and directly into the loading mechanism of a firearm that is not a rifle or a shotgun that is designed or redesigned to fire ammunition.

(3) “Detachable shotgun magazine” means a device that is designed or redesigned to do all of the following:

(A) To be attached to a firearm that is designed or redesigned to fire a fixed shotgun shell through a smooth or rifled bore.

(B) To be attached to, and detached from, a firearm that is designed or redesigned to fire a fixed shotgun shell through a smooth bore.

(C) To feed fixed shotgun shells continuously and directly into the loading mechanism of a firearm that is designed or redesigned to fire a fixed shotgun shell.

(4) “Belt-feeding device” means a device that is designed or redesigned to continuously feed ammunition into the loading mechanism of a machinegun or a semiautomatic firearm.

(5) “Rifle” shall have the same meaning as specified in Section 17090.

(6) “Shotgun” shall have the same meaning as specified in Section 17190.

(d) This section shall become operative on January 1, 2012.

Comment. Section 12021.5 continues former Section 12021.5 (as operative Jan. 1, 2012) without change, except that subdivisions (c)(5)-(6) are revised to correct cross-references to the definitions of “rifle” and “shotgun.”

See also Section 12001 (“firearm” defined).

Penal Code § 12022.2 (as operative Jan. 1, 2012). Possession of armor penetrating ammunition or wearing of body vest

12022.2. (a) Any person who, while armed with a firearm in the commission or attempted commission of any felony, has in his or her immediate possession ammunition for the firearm designed primarily to penetrate metal or armor, shall upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony, be punished by an additional term of 3, 4, or 10 years. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(b) Any person who wears a body vest in the commission or attempted commission of a violent offense, as defined in Section 29905, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the

punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or five years. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(c) As used in this section, “body vest” means any bullet-resistant material intended to provide ballistic and trauma protection for the wearer.

(d) This section shall become operative on January 1, 2012.

Comment. Section 12022.2 continues former Section 12022.2 (as operative Jan. 1, 2012) without change, except that subdivision (b) is revised to correct a cross-reference to the definition of “violent offense.”

See also Section 12001 (“firearm” defined).

Penal Code § 12022.4 (as operative Jan. 1, 2012). Furnishing firearm

12022.4. (a) Any person who, during the commission or attempted commission of a felony, furnishes or offers to furnish a firearm to another for the purpose of aiding, abetting, or enabling that person or any other person to commit a felony shall, in addition and consecutive to the punishment prescribed by the felony or attempted felony of which the person has been convicted, be punished by an additional term of one, two, or three years in the state prison. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence. The additional term provided in this section shall not be imposed unless the fact of the furnishing is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(b) This section shall become operative on January 1, 2012.

Comment. Section 12022.4 continues former Section 12022.4 (as operative Jan. 1, 2012) without change.

See also Section 12001 (“firearm” defined).

Penal Code § 16288. “Body armor”

16288. As used in Section 31360, “body armor” means any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor.

Comment. Section 16288 continues former Section 12370(f) without substantive change.

Penal Code § 22295. Wooden club or baton for law enforcement purposes

22295. (a) Nothing in any provision listed in Section 16580 prohibits any police officer, special police officer, peace officer, or law enforcement officer from carrying any wooden club or baton.

(b) Nothing in any provision listed in Section 16580 prohibits a uniformed security guard, regularly employed and compensated by a person engaged in any lawful business, while actually employed and engaged in protecting and preserving property or life within the scope of employment, from carrying any

wooden club or baton if the uniformed security guard has satisfactorily completed a course of instruction certified by the Department of Consumer Affairs in the carrying and use of the club or baton. The training institution certified by the Department of Consumer Affairs to present this course, whether public or private, is authorized to charge a fee covering the cost of the training.

(c) The Department of Consumer Affairs, in cooperation with the Commission on Peace Officer Standards and Training, shall develop standards for a course in the carrying and use of a club or baton.

(d) Any uniformed security guard who successfully completes a course of instruction under this section is entitled to receive a permit to carry and use a club or baton within the scope of employment, issued by the Department of Consumer Affairs. The department may authorize a certified training institution to issue permits to carry and use a club or baton. A fee in the amount provided by law shall be charged by the Department of Consumer Affairs to offset the costs incurred by the department in course certification, quality control activities associated with the course, and issuance of the permit.

(e) Any person who has received a permit or certificate that indicates satisfactory completion of a club or baton training course approved by the Commission on Peace Officer Standards and Training prior to January 1, 1983, shall not be required to obtain a club or baton permit or complete a course certified by the Department of Consumer Affairs.

(f) Any person employed as a county sheriff's or police security officer, as defined in Section 831.4, shall not be required to obtain a club or baton permit or to complete a course certified by the Department of Consumer Affairs in the carrying and use of a club or baton, provided that the person completes a course approved by the Commission on Peace Officer Standards and Training in the carrying and use of the club or baton, within 90 days of employment.

(g) Nothing in any provision listed in Section 16580 prohibits an animal control officer, as described in Section 830.9, or an illegal dumping enforcement officer, as described in Section 830.7, from carrying any wooden club or baton if the animal control officer or illegal dumping enforcement officer has satisfactorily completed the course of instruction certified by the Commission on Peace Officer Standards and Training in the carrying and use of the club or baton. The training institution certified by the Commission on Peace Officer Standards and Training to present this course, whether public or private, is authorized to charge a fee covering the cost of the training.

Comment. With respect to a wooden club or baton, subdivision (a) of Section 22295 continues former Section 12002(a) without substantive change. The remainder of former Section 12002(a) is continued in Section 17515 without substantive change.

Subdivisions (b)-(g) continue former Section 12002(b)-(g) without substantive change.

Penal Code § 29805. Firearm access by person convicted of misdemeanor violation of certain statutes or other specified offense

29805. Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, paragraph (1) of subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95, subdivision (a) of former Section 12100, as that section read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

Comment. Section 29805 continues former Section 12021(c)(1) without substantive change.

For an exemption from this provision, see Section 29850 (justifiable violation of Section 29800, 29805, 29815, or 29820). For guidance on petitioning for relief from this provision, see Sections 29855 (petition by peace officer for relief from prohibition in Section 29805) and 29860 (petition by person who was convicted of offense before that offense was added to Section 29805). For guidance on false arrest arising from enforcement of this provision, see Section 29865 (immunity from liability for false arrest). For a notice requirement relating to this provision, see Section 29810 (notice to person who is subject to Section 29800 or 29805).

See Section 16520 (“firearm”).

Penal Code § 29825. Firearm access by person subject to temporary restraining order, injunction, or protective order

29825. (a) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that the person is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(b) Every person who owns or possesses a firearm knowing that the person is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(c) If probation is granted upon conviction of a violation of this section, the court shall impose probation consistent with Section 1203.097.

(d) The Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

Comment. Subdivision (a) of Section 29825 continues former Section 12021(g)(1) without substantive change.

Subdivision (b) continues former Section 12021(g)(2) without substantive change.

Subdivision (c) continues former Section 12021(g)(4) without substantive change.

Subdivision (d) continues former Section 12021(g)(3) without substantive change.

See Sections 16520 (“firearm”), 26700 (“dealer,” “licensee,” or “person licensed pursuant to Sections 26700 to 26915, inclusive”).

Penal Code § 31360. Purchase, ownership, or possession of body armor by person convicted of violent felony

31360. (a) A person who has been convicted of a violent felony under the laws of the United States, the State of California, or any other state, government, or country, who purchases, owns, or possesses body armor, as defined in Section 16288, except as authorized under subdivision (b), is guilty of a felony, punishable by imprisonment in a state prison for 16 months, or two or three years.

(b) A person whose employment, livelihood, or safety is dependent on the ability to legally possess and use body armor, who is subject to the prohibition imposed by subdivision (a) due to a prior violent felony conviction, may file a petition for an exception to this prohibition with the chief of police or county sheriff of the jurisdiction in which that person seeks to possess and use the body armor. The chief of police or sheriff may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the chief of police or sheriff deems appropriate, based on the following:

(1) A finding that the petitioner is likely to use body armor in a safe and lawful manner.

(2) A finding that the petitioner has a reasonable need for this type of protection under the circumstances.

In making its decision, the chief of police or sheriff shall consider the petitioner's continued employment, the interests of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that law enforcement officials exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, this paragraph may not be construed to require law enforcement officials to grant relief to any particular petitioner. Relief from this prohibition does not relieve any other person or entity from any liability that might otherwise be imposed.

(c) The chief of police or sheriff shall require, as a condition of granting an exception under subdivision (b), that the petitioner agree to maintain on the petitioner's person a certified copy of the law enforcement official's permission to possess and use body armor, including any conditions or limitations.

(d) Law enforcement officials who enforce the prohibition specified in subdivision (a) against a person who has been granted relief pursuant to subdivision (b), shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in possession a certified copy of the permission granting the person relief from the prohibition, as required by subdivision (c). This immunity from liability does not relieve any person or entity from any other liability that might otherwise be imposed.

Comment. Section 31360 continues former Section 12370(a)-(d) without substantive change. See Sections 16288 ("body armor"), 17320 ("violent felony").

[Insert Disposition Table, with revisions noted in Memorandum
2010-42]

[Insert Supplemental Disposition Table, with revisions noted in
Memorandum 2010-42]

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION
ON CHAPTER 178 OF THE STATUTES OF 2010
(SENATE BILL 1115)

Nonsubstantive Reorganization of Deadly Weapon Statutes

Chapter 178 of the Statutes of 2010 was introduced as Senate Bill 1115, authored by the Committee on Public Safety. The measure implements the conforming revisions in the California Law Revision Commission recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports 217 (2009). The revised Comments set out below supersede the comparable Comments in the recommendation.

Bus. & Prof. Code § 7574.14 (amended). Persons exempt from chapter

Comment. Subdivision (k) of Section 7574.14 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

Fish & Game Code § 10500 (amended). Taking or possessing in refuges

Comment. Subdivision (b) of Section 10500 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

Penal Code § 833.5 (amended). Detention by peace officer to determine whether crime relating to firearms or deadly weapons was committed

Comment. Subdivision (e) of Section 833.5 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.
